

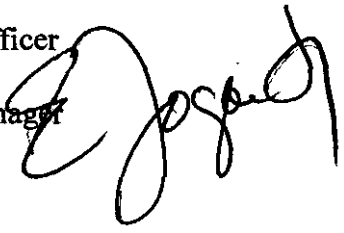


Department of Land Use

**MEMORANDUM**

To: Christopher Bullock, President, New Castle County Council Members, County Council

Copy: Thomas P. Gordon, County Executive  
David Grimaldi, Chief Administrative Officer

From: Eileen P. Fogarty, Land Use General Manager 

Date: May 26, 2015

Subject: Annual Report: Accessory Dwelling Unit (ADU) Program  
Calendar Years 2007 through 2014

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The New Castle County Department of Land Use is pleased to submit an Annual Report to County Council regarding an analysis of the use and effectiveness of the Accessory Dwelling Unit Program in New Castle County, Delaware. This report is prepared pursuant to Section 40.03.410 H of the New Castle County Code.

**DEFINITION**

As defined by the Unified Development Code, an accessory dwelling unit ("ADU") is a second, subordinate dwelling unit added to or created within a single-family detached dwelling, which provides independent living, sleeping, eating, cooking, and sanitation facilities.

**CODE AMENDMENTS**

**Ordinance 07-001.** Adopted by County Council on April 10, 2007, the purpose of the ordinance was to create conditions that provided property owners the ability to construct ADUs on single family parcels. Modification to the County Code included the following conditions:

1. One (1) ADU is permitted per property, and
2. The property owner must reside in one of the units, and
3. The unit must be included within the principal structure, and
4. One (1) separate guest house may be built on lots greater than two (2) acres.
5. Total number of ADU permits is limited to 0.2% of the total number of single family detached homes in the unincorporated portion of the County.

**Ordinance 07-153.** Subsequent to the adoption of Ord. 07-001, New Castle County was contacted in a joint request by the governing bodies of Arden, Ardentown and Ardencroft ("Ardens"). The request was for the county to recognize the unique form of government within

the Ardens and to consider a path forward to legitimize existing accessory dwelling units within the Ardens as something other than nonconforming uses. The ordinance adopted by County Council in February 2008 certifies that all existing ADUs in the Ardens constructed prior to May 1, 2007 will become legal permitted uses and will recognize that accessory dwelling units or multiple domiciles existing prior to May 1, 2007 are permitted uses within the incorporated communities of Arden, Ardencroft, and Ardentown. The amendment gives the Ardens a measure of local control that does not compromise or negatively impact the overall integrity of the County Code. A total of 70 lots with 93 ADUs was certified by the Ardens and the County in February 2009.

## LITIGATION

Following the adoption of Ordinance 07-001, several property owners in the Centerville area of New Castle County raised concerns regarding the proliferation of multiple, detached dwelling units on properties intended for residential use. Litigation ensued, however all parties to the suit subsequently agreed to dismiss the court action on June 28, 2010. The Department is cognizant of the concerns previously raised by neighboring property owners, and therefore strives to respond accordingly when reviewing any development application that involves detached ADU units.

## ADU PERMITS ISSUED THROUGH DECEMBER 31, 2104

The types of residential building permits issued relate to Residential Addition, Single Family by Developer, or Single Family by Homeowner. Department of Land Use records indicate that since the adoption of the Accessory Dwelling Unit Ordinance in April 2007, a total of 185 residential building permits ("Permits") have been issued for properties containing an ADU. The table below indicates the number of permits issued each year.

ADU Permits Issued Per Calendar Year In the Unincorporated Area of the County	
Year	Number of Permits
2007	38
2008	10
2009	21
2010	23
2011	12
2012	31
2013	17
2014	25
2015	8
Totals	185

While most of the 185 ADU's have been permitted without the need for a variance from the conditions set forth in Section 40.03.410 H the UDC, the Board of Adjustment has granted a total of seven (7) dimensional variance requests to construct an ADU. In each instance, the variance was associated with a detached ADU, with six granted for a variance from the 2-acre minimum lot requirement for detached units and the other with respect to a necessary setback encroachment. The 7 variances (1 in 2009, 2 in 2010, 1 in 2012, 1 in 2013, 1 in 2014 and 1 in 2015) represent only 3.7% of the total number of ADU's permitted to date. No recent trending is evident as the 7 variances are spread out over six years and as such, the Department does not view these requests as excessive at this point.

Section 40.03.410 (H) (12) limits the total number of ADUs permitted in New Castle County. More specifically, it states that the total number of building permits issued for ADUs in unincorporated New Castle County shall not exceed 0.2% of the total number of single family detached homes in the unincorporated area of the County based on assessment records. Based on County assessment records, there are 120,509 single family detached homes in the unincorporated areas of New Castle County. This projects to a total number of permitted ADUs per the enabling legislation to be no more than 241 ADUs.

## **SUMMARY**

In summary, the Council has adopted a successful program that provides an opportunity for an additional residential unit to be constructed on a single family lot. With 185 permits issued to date, it is the opinion of the Department that the program has been successful. The Department's review process associated with issuance of a building permit is not burdensome to the public and has functioned smoothly. With the sole exception of litigation from Centerville residents that was ultimately dismissed, the review process has operated without comment or complaint from the public. And as is shown on the map that follows, the distribution of ADUs throughout the county has been fairly uniform without any clear clusters in any one area. The Department appreciates the opportunity to report on the activity of the Accessory Dwelling Unit Program in New Castle County.

